REMARKS

In the office action dated December 10, 2004, the Examiner rejected claims 1, 3-5, 11 and 15-20 as being anticipated by Rosa et al. (U.S. Pub. No. 2003/0091960). Claims 2, 6-10, 12-14 and 21 were rejected as being rendered obvious by the combination of Rosa et al. and Chien et al. (U.S. Pat. No. 6,308,062). Applicant respectfully traverses the rejections.

With respect to the rejection of claim 1, 3-5, 11 and 15-20, Applicant objects to the rejection because the published Rosa et al. application is not proper prior art. The Rosa et al. application was filed on May 21, 2001. While Applicant's applications was filed on November 7, 2001, it claim priority to Applicant's provisional patent application (60/246,437) which was filed on November 7, 2000, more than 6 months prior to the filing of the Rosa et al. application. Applicant has included herewith a copy of the provisional application to show that the subject matter was disclosed in the provisional application.

If the Examiner wishes to enter a final rejection, it should be based on the disclosure contained in the provisional application (60/205,811) to which the Rosa et al. application claims priority. The Examiner will appreciate that the disclosure of a provisional application may vary significantly from that of the non-provisional application. Once the disclosure of the provisional application is provided, Applicant may then elect to swear behind the filing date of the provisional or to modify its claims. Apart from the entry of a final rejection based on the Rosa et al. provisional application, however, Applicant is entitled to allowance of his claims, as it clearly has priority over the published Rosa et al. application.

Applicant also objects to the rejection of claims 17-20 as being anticipated by Rosa et al. Claim 17 sets forth a method for actuating a bullet target. The targets in Rosa et al. are not bullet targets. To the contrary, the very paragraphs of Rosa et al. that the Examiner cites teach

an adaptor for use with an unloaded gun so that the gun emits a laser beam to actuate the target. "The laser assembly is attached to an unloaded user firearm 6 to adapt the firearm for compatibility with the training system." (Paragraph 35). Furthermore, the application repeatedly states that it is form simulating live ammunition training. Thus, claims 17-22 should be allowed.

Turning now to the rejection of claims 2, 6-10, 12-14 and 21, Applicant respectfully traverses the rejection. The initial burden of presenting a prima facie case of obviousness rests with the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). It is impermissible to conclude that an invention is obvious based solely on what the examiner considers to be basic knowledge or common sense. See In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1613, 1697 (Fed. Cir. 2001). Thus, the burden is on the examiner to identify concrete evidence in the record to support his conclusion that it would have been obvious to combine a wireless telephony system with a firearm laser training system to achieve the invention claimed by Applicant. In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000).

In addition to the problems with relying on the Rosa et al. application, the Final Office Action utterly fails in this regard. The Examiner provides only a very conclusory assertion that Chien is analogous art and that it would be obvious to one of ordinary skill in the art to combine the two references. As noted in the above-cited case law, this is impermissible. The Examiner must specifically point out the subject matter in the prior art references which suggest the combination and provide an objective basis for the combination. Furthermore, the Examiner provides virtually no response to the specific discussion provided by Applicant as to why Chien is not analogous art to the present invention. Thus, the"Final" status of the office action should be withdrawn and the Examiner should provide an explanation as to why a person skill in the art

of designing shooting targets would look to telecommunications systems as a method for improving conventional target systems. There is clearly no such teaching in Rosa et al. or Chien.

Finally, the Final Office Action provides no rejection as to claim 22. Therefore, claim 22 should be allowed.

Should the Examiner have additional concerns, it is requested that he contact Applicant's counsel, Randall B. Bateman, at (801) 533-0320 so that any concerns may be resolved. The Commissioner is hereby authorized to charge any amount owing or credit any overpayment to Account No. 502720.

Sincerely,

BATEMAN IP LAW GROUP

Randall B. Bateman
Reg. No. 37,774
8 East Broadway, Suite 550
P.O. Box 1319
Salt Lake City, UT 84110

Tel. (801) 533-0320
Fax. (801) 533-0323

E-mail: rbb@utah-ip.com